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In The

Supreme Court of the United States

October Term, 1964

No. 387

ROBERT BLOW and ELLEN MARIE DAVIS,
Petitioners,

vs.

STATE OF NORTH CAROLINA,
Respondent.

BRIEF OF THE RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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North Carolina, Respondent.

INDEX

Opinion Below 1
Jurisdiction 1
Questions Presented 1
Constitutional and Statutory Provisions Involved 2
Argument 3
I. THE STATE'S PROSECUTIONS DID NOT DEPRIVE PETITIONERS OF ANY RIGHT PROTECTED BY THE FOURTEENTH AMENDMENT 3
II. THE CIVIL RIGHTS ACT OF 1964 DOES NOT AFFECT OR ABATE THE CONVICTIONS IN THESE CASES 5
III. CONCLUSION 5
Respondent's Statement of the Case 3

APPENDICES

Respondent's Appendix A 7
Respondent's Appendix B 10

TABLE OF CASES

Avent v. North Carolina, 373 U.S. 375, 10 L. Ed. 2d 420, 83 S. Ct. 1311 4
Peterson v. City of Greenville, 373 U.S. 244, 10 L. Ed. 2d 323, 83 S. Ct. 1119 4
Robinson v. Florida, ... U.S. ....., 12 L. Ed. 2d 771, 84 S. Ct. 4
State v. Avent, 253 N.C. 580, 118 S.E. 2d 47 4
State v. Blow, 261 N.C. 467, 135 S.E. 2d 17 1
State v. Clyburn, 247 N.C. 455, 101 S.E. 2d 295 4
State v. Cooke, 246 N.C. 518, 98 S.E. 2d 885 4
State v. Cooke, 248 N.C. 485, 103 S.E. 2d 846 4
State v. Davis, 261 N.C. 463, 135 S.E. 2d 14 1

CONSTITUTIONAL PROVISIONS AND STATUTES

Constitution of the United States:
Fourteenth Amendment 2, 3
Federal Statutes:
Civil Rights Act of 1964 ..... 2, 3, 5
28 U.S.C. 1257 (3) 1
State Statutes:
Sec. 14-134, General Statutes of North Carolina 2
Sec. 72-1, General Statutes of North Carolina 2
Chapter 95, Art. 6, General Statutes of North Carolina 2, 3, 4
Chapter 1114, Session Laws of 1963 ..... 2, 3

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OPINION BELOW

The Opinions of the Supreme Court of North Carolina are reported at 261 N.C. 463, 135 S.E. 2d 14, and 261 N.C. 467, 135 S.E. 2d 17, and both opinions were filed on the 18th of March, 1964.

JURISDICTION

The Petitioners invoke the jurisdiction of this Court pursuant to Title 28, U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Were the Petitioners deprived of constitutional rights

guaranteed by the Fourteenth Amendment for trespassing upon, and refusing to leave, the property of the restaurant owner and motel owner?

2. Are the prosecutions in these two cases suspended or abated by the passage of the Civil Rights Act of 1964, where the Petitioners were convicted and judgments passed upon them prior to the passage of the Civil Rights Act?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourteenth Amendment of the Constitution of the United States, which will not be quoted. It also involves Section 14-134 of the General Statutes, which is as follows:

> "If any person after being forbidden to do so, shall go or enter upon the lands of another, without a license therefor, he shall be guilty of a misdemeanor, and on conviction, shall be fined or imprisoned in the discretion of the court, or both such fine and imprisonment."

It also involves Article 6 of Chapter 95 of the General Statutes, regulating separate toilets for sexes and races, which was repealed by Chapter 1114 of the Session Laws of 1963, effective June 24, 1963, and which appears in the Cumulative Supplement of the 1963 General Statutes of North Carolina in two sections, which are Section 95-48 and Section 95-49 of the Cumulative Supplement of the General Statutes, and these appear in the Appendix.

The case also involves Section 72-1 of the General Statutes of North Carolina, which is as follows:

> "Every inn shall at all times provide suitable food, rooms, beds and bedding for strangers and travelers whom he may accept as guests in his inn or motel.

RESPONDENT'S STATEMENT OF THE CASE

The facts in both cases are well stated in the opinions of the Supreme Court of North Carolina, which are set forth in the Petitioners' Appendix on pp. 1 and 7a.

ARGUMENT

I.

THE STATE'S PROSECUTIONS DID NOT DEPRIVE PETITIONERS OF ANY RIGHT PROTECTED BY THE FOURTEENTH AMENDMENT.

The Petitioners, in the first part of their argument, base their contentions on certain administrative regulations issued by the State Board of Health, which are set forth in the Petitioners' Appendix at p. 21a. Apparently, the primary portion of this regulation, as Petitioners contend, is in paragraph 6, relating to toilet facilities, which requires restaurants to furnish "facilities adequate for each sex and race."

It is not denied that North Carolina has sanitary regulations which apply to restaurants and other establishments serving food and that these establishments are inspected and graded. The Petitioners, however, have overlooked the fact that Article 6 of Chapter 95 of the General Statutes, which required separate toilet facilities for the sexes and races, has been repealed by rewriting same, according to Chapter 1114 of the Session Laws of 1963. This Article 6 of Chapter 95 appears as our Appendix A, and new Article 6 (the rewritten version) appears as Article 6 of Chapter 95 in the 1963 Cumulative Supplement of the General Statutes, which is also quoted in our Appendix A. The rewritten version makes no distinction as to races, but does as to sex, and, apparently, if the Petitioners' contentions are carried to the limits of their logic, then it is unconstitutional for us to even make a sex distinction in toilet facilities because of Section 703 of the Civil Rights Act of 1964. We point out that while the form of the administrative regulation of the

State Board of Health (Petitioners' Appendix p. 21a) has not been revised, as a matter of practice the sanitary inspectors have been issued instructions to proceed on the basis of the rewritten version of Article 6 of Chapter 95 of the General Statutes (Respondent's Appendix B).

We, therefore, are not confronted with the situation involved in AVENT vs. NORTH CAROLINA, 373 U.S. 375, 10 L. Ed. 2d 420, 83 S. Ct. 1311, which was reversed on the authority of PETERSON vs. CITY OF GREENVILLE, 373 U.S. 244, 10 L. Ed. 2d 323, 83 S. Ct. 1119, all of which was based upon the fact that there were city ordinances requiring segregation.

We are also not confronted with the ruling of this Court in ROBINSON vs. FLORIDA, ... U.S. ....., 12 L. Ed. 2d 771, 84 S. Ct. ..... We do not now have any regulation which exerts State action in the form of requiring separate toilet facilities for the races.

We are not confronted with the question of the duties of the hotel or innkeeper. In the first place, innkeeper statute of this State is permissive and has so been construed by the Supreme Court of North Carolina in the case of Petitioner Davis (Petitioners' Appendix p. 5a) and, furthermore, there is no evidence showing that the Petitioner Davis demanded that she be received as a guest in the motel.

We shall not review all the North Carolina cases as to the trespass statute for the reason that the holdings of the Supreme Court of North Carolina have been set forth in the cases of STATE vs. CLYBURN, 247 N.C. 455, 101 S.E. 2d 295; STATE vs. COOKE, 246 N.C. 518, 98 S.E. 2d 885; STATE vs. COOKE, 248 N.C. 485, 103 S.E. 2d 846; STATE v AVENT, 253 N.C. 580, 118 S.E. 2d 47.

Counsel for the petitioners have had notice for a long time that it is the interpretation of the trespassing statute by the highest court in the State that it is a violation of the law not to leave a person's premises upon demand, and that to persist

in remaining on the premises is a criminal offense. So far as we know, this Court has never declared the trespass statute of North Carolina to be invalid.

II.

THE CIVIL RIGHTS ACT OF 1964 DOES NOT AFFECT OR ABATE THE CONVICTIONS IN THESE CASES.

We do not quote the sections of the Civil Rights Act of 1964, as they appear in the Appendix to the Petitioners' Brief.

The answer to the Petitioners' arguments on this division of the case should not be of an extended nature. The fact is that the opinions of the Supreme Court of North Carolina in the case of each petitioner were filed on March 18, 1964. The Petitioners had already been convicted, judgment and sentence had been ordered and passed by the court and affirmed by the Supreme Court of North Carolina. The Civil Rights Act of 1964 was not in existence and was not signed by the President until July 2, 1964. The Supreme Court of North Carolina, therefore, did not pass upon the effect of the Civil Rights Act of 1964, and, not being in existence, it was not even before the Supreme Court of North Carolina. There is no evidence that the supplies and products used by the restaurant and motel owner moved in interstate commerce, and the only piece of evidence in support of this contention is the fact that the proprietor advertised in newspapers, on the radio and in the rooms of the adjoining motel. The Supreme Court of North Carolina had no opportunity to judge whether or not these establishments came within the purview of Section 201 of the Civil Rights Act of 1964.

III.

CONCLUSION

We submit, therefore, that under the circumstances of this

case, the Petitioners' application for writ of certiorari should be denied by this Court.

Respectfully submitted,

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RALPH MOODY
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Justice Building
Raleigh, North Carolina

Counsel for the State of
North Carolina, Respondent.

Appendix A

ARTICLE 6.

Separate Toilets for Sexes and Races.

§ 95-48. *When separate toilets required; penalty.* — All persons and corporations employing males and females in any manufacturing industry, or other business employing more than two males and females in towns and cities having a population of one thousand persons or more, and where such employees are required to do indoor work chiefly, shall provide and keep in a cleanly condition separate and distinct toilet rooms for such employees, said toilets to be lettered and marked in a distinct manner, so as to furnish separate facilities for white males, white females, colored males and colored females: Provided, that the provisions of this section shall not apply to cases where toilet arrangements or facilities are furnished by said employer off the premises occupied by him. (1913, c. 83, s. 1; C. S., s. 6559.)

§ 95-49. *Location; intruding on toilets misdemeanor.* — It shall be the duty of the persons or corporations mentioned under this article to locate their toilets for males and females, white and colored, in separate parts of their buildings or grounds in buildings hereafter erected, and in those now erected all closets shall be separated by substantial walls of brick or timber, and any employee who shall willfully intrude upon or use any toilet not intended for his or her sex or color shall be guilty of a misdemeanor and upon conviction shall be fined five dollars. (1913, c. 83, s. 4; C. S., s. 6560.)

§ 95-50. *Punishment for violation of article.* — If any person, firm, or corporation refuses to comply with the provisions of this article, he or it shall be guilty of a misdemeanor, and upon conviction shall be fined or imprisoned, or both, in the discretion of the court. (1913, c. 83, s. 2; 1919, c. 100, s. 12; C. S., s. 6561.)

§ 95-51. *Police in towns to enforce article.* — The police officers of any town or city shall investigate the places of business of any person or corporation employing males and females and see that the provisions of this article are put in force, and shall swear out a warrant before the mayor or other proper officer of any town or city and prosecute all persons, corporations, and managers of corporations violating any of the provisions of this article. (1913, c. 83, s. 3; C. S., s. 6562.)

§ 95-52. *Sheriff in county to enforce article.* — When any persons or corporations locate their manufacturing plant or other business outside of any city or town, the sheriff of the county shall investigate the condition of the toilets used by such manufacturing plant or business and see that the provisions of this article are complied with, and shall swear out a warrant before a justice of the peace and prosecute anyone violating the provisions of this article. (1913, c. 83, s. 5; C. S., s. 6563.)

§ 95-53. *Enforcement by Department of Labor.* — The Department of Labor shall investigate the places of business of any person or corporation employing males and females, and shall make such rules and regulations for enforcing and carrying out this article as may be necessary. (1919, c. 100, s. 7; C. S., s. 6563(a); 1931, c. 312, ss. 12, 14.)

Article 6.

Separate Toilets for Sexes.

§ 95-48. *Separate toilets required.* — In the interest of public health and in compliance with G. S. 130-160 and 143-138, adequate, well-lighted and ventilated toilet facilities plainly lettered and marked, for each sex shall be provided and maintained in a sanitary condition by all persons and corporations employing both males and females. Such toilet facilities shall be separated by full and substantial walls. (1913, c. 83, s. 1; C. S., s. 6559; 1963, c. 1114, s. 1.)

§ 95-49. *Intruding on toilets unlawful.* — It shall be unlawful, and punishable as provided in G. S. 95-50, for any employee to wilfully intrude or use any toilet not intended for his or her sex. (1913, c. 83, s. 4; C. S., s. 6560; 1963, c. 1114, s. 2.)

C
O
P
Y

Appendix B

April 20, 1964

Mr. T. W. Bivens
Director of Sanitation
Mecklenburg-Charlotte
Health Department
Charlotte, North Carolina

Dear Mr. Bivens:

Reference is made to Mr. Drye's recent conversation with Mr. Andrews regarding Item 6, Toilet Facilities, of the inspection form for restaurants and other foodhandling establishments (Form No. 451, as revised in July, 1958). A question had been raised as to the proper interpretation of the following provision on the inspection form: "facilities adequate for each sex and race".

As you know, the toilet facilities item in the restaurant sanitation regulations as revised by the State Board of Health in 1955 and 1958 did not refer to race. However, the regulations did, and do, require that toilet facilities comply with the Rules and Regulations Governing Work Places and Working Conditions of the North Carolina Department of Labor. Since these regulations did require separate facilities, the quoted wording was considered appropriate. We understand that the Labor regulations are being revised, following action of the 1963 General Assembly, and will not require separate facilities for each race.

In view of the above, we propose to delete the words "and race" when the inspection form is next revised. Until such time as the revised forms are available, sanitarians should disregard the words "and race".

Very truly yours,

/S/

J. M. Jarrett, Director
Sanitary Engineering Divisio

CC: Dr. J. W. R. Norton
Dr. Maurice Kamp
Mr. W. M. Linker, Jr.
District Sanitarians, SBH